

NATURAL RESOURCES COMMISSION DIVISION OF HEARINGS

Information Bulletin #1(First Amendment)

SUBJECT: Establishment of Division of Hearings; Indexing of Final Adjudicative Agency Decisions; Transcript Fees. To be noted, the information outlined here supersedes Information Bulletin #1 (13 IR 1938).

ESTABLISHMENT OF THE DIVISION OF HEARINGS

The Department of Natural Resources is among those state agencies that are governed by IC 4-21.5 (sometimes called the “administrative orders and procedures act” or the “administrative adjudication act”) and IC 4-22 (rule adoption). The Indiana general assembly has provided that effective July 1, 1990, all hearings required by IC 4-21.5 and IC 4-22 for the Department will be conducted on behalf of the Natural Resources Commission. See IC 14-10-2-3 and IC 14-34-2-2.

To assist in the separation of the hearings functions from other legal functions of the Department of Natural Resources, the Natural Resources Commission has, by resolution, established under IC 14-10-2-2 a “division of hearings.” The Commission approved the resolution on January 25, 1990. As required by statute, the resolution was considered and approved by the Governor on April 27, 1990 and became effective July 1, 1990.

The resolution provides in part: “The division of hearings is established, under the natural resources commission, to be coordinated by the chief administrative law judge: (1) to conduct hearings and proceedings relative to the administrative adjudication act, the rule adoption act, the conservancy district act, and as otherwise specified by the commission; and (2) to provide assistance to the commission and the other boards of the department in seeking to conform with the legal requirements for the conduct of their meetings.”

The current offices of the Division of Hearings are located at Indiana Government Center South, 402 West Washington Street, Room W272, Indianapolis, Indiana. The telephone number is (317) 232-4699.

INDEXING OF FINAL ADJUDICATIVE AGENCY DECISIONS

The administrative adjudication act provides in IC 4-21.5-3-32 that an agency shall index and make available all written final orders for public inspection and copying. In addition to providing better communications to the regulated public, this provision acknowledges that an agency may utilize an indexed order as precedent. The sanction applicable to an agency that does not index its orders is that the agency generally may not use nonindexed orders as precedent.

The Division of Hearings maintains a database on the Internet, called "CADDNAR." Accessible through CADDNAR are decisions rendered by the Commission following the completion of a contested proceeding. Included are those following hearing or summary judgment (or involuntary dismissal, where a noteworthy point of law is considered). In addition, upon the request of the parties, settlement agreements are included which have notable precedential value. CADDNAR includes all such decisions since 1978, when the agency began regularly assigning adjudicatory cases to Administrative Law Judges. An attempt is made to track the history of individual decisions taken on judicial review to a circuit or superior court or on appeal. CADDNAR is a searchable database available on-line at the Natural Resources Commission Homepage at http://www.ai.org/cgi-bin/nrc/decision_list.pl.

During its meeting of November 22, 1988, the Natural Resources Commission, by resolution, adopted CADDNAR as the agency index under IC 4-21.5-3-32 for final orders of the Department of Natural Resources. The Commission also specified that material included in CADDNAR may be used as precedent for actions controlled by the administrative adjudication act.

Use of CADDNAR was first acknowledged by the Indiana Court of Appeals in Peabody Coal v. Indiana DNR, (1994 Ind. App.), 692 N.E.2d 925. Subsequent reported decisions have also acknowledged CADDNAR.

TRANSCRIPT FEES

Under the administrative adjudication act, the party that initiates judicial review of a final agency order is generally responsible for the costs of transcript preparation. As provided in IC 4-21.5-5-13(d), the agency "shall charge" the person seeking judicial review "with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court." The statutory subsection also clarifies that preparation costs include more than copying expenses.

The Natural Resources Commission has adopted 312 IAC 3 to assist in its implementation of the administrative adjudication act. 312 IAC 3-1-14 governs court reporters and transcripts. Subsection (c) provides, in part, that the "party who requests a transcript... shall pay the cost of the transcript: (1) as billed by the court reporting service; or (2) if the transcript is prepared by an employee of the commission, as determined from time to time by the commission on a per page basis after consideration of all expenses incurred in the preparation of the transcript."

The Natural Resources Commission at its March 24, 1998, meeting has determined the per page basis for a transcript prepared by an employee of the commission according to the 1988 resolution. "The Natural Resources Commission resets the fee for transcript preparation at \$3.80 per page."